

# **I-5 / Everett HOV Design-Build Project**

## **REQUEST FOR PROPOSALS**

### **Appendix Q2 Example Construction and Maintenance Agreement (BNSF/DB)**

**Addendum #8:**

**March 15, 2005**

Example

CONSTRUCTION AND MAINTENANCE AGREEMENT  
TACOMA NARROWS OVERHEAD HIGHWAY BRIDGE (MP 8.51)  
TACOMA WASHINGTON

RAILWAY Contract NO. \_\_\_\_\_  
File No \_\_\_\_\_

AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2001, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter referred to as the "Railway", and [REDACTED] WASHINGTON, referred to as the "Agency", and the STATE OF WASHINGTON, through its Department of Transportation, hereinafter referred to as the "Owner".

RECITALS:

WHEREAS: the Seattle Subdivision is currently owned and operated by the Railway; and

WHEREAS: in the interest of aiding motor vehicle traffic the Agency is proposing to construct a second Tacoma Narrows highway overpass, hereinafter referred to as the Project.

WHEREAS: the centerline of the Tacoma Narrows overpass and highway alignment will cross over the Railway's right-of-way and mainline at railroad survey station 449+40.07, Railroad MP 8+2,702' (MP 8.51), and

WHEREAS: the Owner will require a construction and maintenance easement from the Railway for the project which is located in Government Lot 3, Section 34, T 21 N., R 2 E., WM. As shown on the plans marked Exhibit "A" attached hereto and made a part hereof, and

WHEREAS: the Railway will be required to perform certain work on its facilities, and

WHEREAS: the parties hereto desire that the work to be performed by the Agency in connection with said construction be performed in accordance with plans and specifications to be prepared by the Agency, and

WHEREAS: the Agency is willing to undertake the construction of said project with Agency funds, state funds and such federal funds as may be available, and

WHEREAS: the Railway is willing to consent to the execution of the said project upon the terms and conditions herein stated and not otherwise, and

WHEREAS: the parties hereto desire to contract for work to be performed by each of them in connection with this project and the payment of costs and expenses therein involved, and

ARTICLE I

AGREEMENT:

NOW THEREFORE, in consideration of the covenants of the Agency hereinafter contained, and faithful performance thereof, Railway agrees:

1. The Railway shall grant to the Owner by separate instrument:

a) For and consideration of \$ [REDACTED], an easement, 35,864 square feet more or less, for overhead bridge purposes over, through, and across the Railway's right-of-way as identified on Exhibit "A" attached.

2. To furnish all labor, materials, tools, and equipment, and do "Railroad Work" required due to the construction of

the Project, such railroad work and the estimated cost thereof being as shown in Exhibit "B" attached hereto and made a part hereof. In the event that construction of the Project has not commenced within six (6) months from the effective date of this Agreement, Railway may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit "B". In such case, Railway shall provide to the Agency its revised cost estimates highlighting all changes that are made. Any item of work incidental to those items listed in Exhibit "B", but not specifically mentioned therein, may be included as part of this agreement as an item of work upon written approval of Agency, if practicable.

The Railway may submit progress bills to the Agency during the progress of the work for the actual cost of services and expenses. The Agency will then pay progress bills within 30 days after receipt of a properly submitted bill. If the billing is disputed for any reason, the Agency will promptly notify the Railway and will pay any undisputed amount.

The Railway and the Agency shall maintain records regarding the work performed and the costs and expenses incurred by the parties for the project in accordance with generally accepted accounting principles and practices. Said records shall be made available to the other party, or for Agency, or federal audit, upon request during normal business hours, for a period of three years after the final payment.

Construction of the Project shall include the following work by Railway:

- (a) Preliminary engineering, design, and contract preparation;
  - (b) Construction of 24' concrete crossing (3 tracks) with associated CWR rail, ties, ballast and fabric. Place 260TF (130TF per track) of planking under the area of the new bridge being constructed. Remove the crossing once the project is constructed.
  - (c) Relocate fiber-optics and to reconnect power and telephone service, if required.
  - (d) Installation of active warning devices, shoulder mount type, with gates and train activation devices for the duration of the project. After construction is complete the active warning devices will be removed.
  - (e) Furnishing of such watchmen and flagmen as may be necessary for the safety of its property and the operation of its trains during construction of said Project; and
  - (f) Furnishing of engineering and inspection as required for construction of said Project.
3. To do all work provided in Article I, Section 2 above with its own employees working under Railroad Labor Agreements or by contractor(s), if necessary, and on an actual cost basis.
  4. Agency agrees to reimburse Railway for work of an emergency nature caused by Agency or Agency's contractor, in connection with the Project which Railway deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or Railway property. Such work may be performed by Railway without prior approval of Agency and Agency agrees to reimburse Railway for all such emergency work.
  5. To submit to Agency for payment upon completion of the Project, a detailed statement covering the cost of the work performed by Railway, segregated as to labor and materials, and in accordance with and subject to the terms and provisions of Federal Highway Administration's FHPM 143, as amended. All applicable portions of the Federal Highway Administration's FHPM 662.1 as amended and FHPM 143 as amended are by reference incorporated herein and made a part hereof.

## ARTICLE II

IN CONSIDERATION of the covenants of Railway herein set forth and the faithful performance thereof, Agency agrees as follows:

1. To furnish to Railway plans and specifications for the Project. Four sets of said plans, together with two copies of specifications, shall be submitted to Railway for approval prior to commencement of construction. After having been approved by both parties hereto, said plans and specifications are hereby adopted and incorporated into

this agreement by reference.

2. To provide for and maintain minimum vertical clearances as shown on Exhibit "A".
3. To acquire, at no cost to Railway, all rights of way necessary for the construction of the Project.
4. To make any and all arrangements to secure the location or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be found necessary to locate or relocate in any manner whatsoever due to the construction of the project.
5. To construct the Project as shown on Exhibit "A" and do all work provided for in the plans and specifications for the Project, except such work that Railway herein agrees to do. Principal elements of work to be performed by Agency in the construction of the Project are as follows:
  - (a) Construction of the structure.
  - (b) Necessary Grading, Paving and approach work to the construction crossing being constructed by Railway.
  - (c) Construction of the conveyor system.
  - (d) Provide containment facilities over the railroad tracks for the prevention of spills, and other objects from the conveyor system.
  - (e) Perform necessary engineering, grading, and staking for the Structure;
  - (f) Provide adequate drainage of the overhead structure away from the Railway's tracks and protect track drainage to the satisfaction of the Railway.
  - (g) Provide 260 TF of 7 1/2' thick planking for the temporary protection of the tracks during construction. Railway to install planking and remove after construction is complete.
  - (h) Construct security fencing between track and the work site as approved by the Railway. This fence may be installed to prevent project personnel or equipment from entering within a safe distance of the Railway's tracks.
  - (g) Perform all other work not specifically mentioned as work to be performed by the Railway necessary to complete the project in accordance with the plans and specifications.
6. To furnish all labor, materials, tools, and equipment in performing the work it agrees to perform herein. All work of construction with respect to said Project shall be undertaken by Agency, or Agency's contractor and shall be performed at such times as shall not endanger or interfere with the safe and timely operations of Railway's track and other facilities.
7. To require its contractor(s) to notify Railway's Roadmaster at least 30 calendar days in advance of commencing work on Railway property or near Railway's tracks, when requesting a Railway flagman in accordance with the requirements of "The Right of Entry Agreement" attached hereto, in order to protect Railway from damage to its trains and property.
8. To require its contractor(s) to furnish Railway's Manager of Public Projects, for approval, four copies of plans and two sets of calculations of any shoring or cribbing proposed to be used over, under, or adjacent to Railway's tracks.
9. The Agency agrees to include the following provisions in its contract with a contractor performing work on said Project.
  - (a) Fiber optic cable systems owned by various telecommunication companies may cross or run parallel in Railway's rail corridor. The Contractor shall be responsible to contact Railway and/or the telecommunication companies to determine whether there are any fiber optic cable systems located within the Project boundaries that could be damaged or their service disrupted due to the construction of the Project. The contractor shall also pothole all lines either shown on the plans or marked in the field in order

to verify their locations. The contractor shall also use all reasonable methods when working in the Railway rail corridor to determine if any other fiber optic lines may exist.

- (b) Failure to notify, pothole or identify these lines shall be sufficient cause for the Agency Engineer to stop construction at no cost to the Agency or Railway until these items are completed. Costs for repairs and loss of revenues and profits due to damage to these facilities through negligent acts by the contractor shall be the sole responsibility of the contractor. The contractor shall indemnify and hold the Agency and the Railway harmless against and from all cost, liability and expense arising out of or in any way contributed to these negligent acts of the contractor.
  - (c) The telecommunication companies shall be responsible for the rearrangement of any facilities determined to interfere with the construction. The contractor shall cooperate fully with any company performing these rearrangements.
10. To also incorporate in each prime contract for construction of the Project, or the specifications therefor, the provisions set forth in Article II, Sections 6, 7, 8, 9, 11, (a) and 12 (b), and in Article III, Sections 3, 4, 10, and 11, and the provisions set forth in the "Right-of-Entry Agreement" attached hereto and by reference made a part hereof.
11. That, except as hereinafter otherwise provided, all work to be performed hereunder by Agency in the construction of the Project will be performed pursuant to a contract or contracts to be let by Agency, and all such contracts shall provide.
- (a) That all work performed thereunder, within the limits of Railway's right of way shall be performed in a good and workmanlike manner, and in accordance with plans and specifications approved by Railway. Those changes or modifications during construction that affect safety or Railway's operations shall also be subject to Railway's approval;
  - (b) That no work shall be commenced within Railway's right of way until each of the contractors employed in connection with said work shall have (i) executed and delivered to Railway an Agreement in the form of "The Right-of-Entry Agreement" delivered to and secured Railway's approval of the insurance required by said "Right-of-Entry Agreement".
12. (a) Railway shall have the right to request that any Agency employee, any Agency contractor, or any employee of a Agency contractor who performs any work within Railway's right of way and which affects Railways operations or facilities, be removed from the Project for incompetence, neglect of duty, unsafe conduct or misconduct. In the event Agency or its contractor elects not to honor such request, Railway may stop work within its right of way until the matter has been fully resolved to Railway's satisfaction. The party whose employee has been asked to leave the Project will indemnify the requesting party against any claims arising from such removal.
- (b) Agency's employees, agents, contractors, representatives and invitees shall wear the current BNSF Personnel Protective Equipment ("PPE") when on the Railway's rail corridor. Railway PPE shall meet applicable OSHA and ANSI specifications. Existing Railway PPE requirements are: (i) safety glasses; permanently affixed side shields; no yellow lenses; (ii) hard hats with high visibility orange cover; (iii) safety shoes with hardened toe, above the ankle lace up and a defined heel; and (iv) high visibility reflective orange vests. Hearing protection, fall protection and respirators will be worn as required by state and federal regulations.
13. To advise Railway's Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion and to notify Railway's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with Railway for the purpose of making final inspection of the Project.

### ARTICLE III

IN CONSIDERATION of the premises, it is mutually agreed as follows:

1. That all work contemplated in this agreement shall be performed in a good and workmanlike manner, in accordance with plans and specifications approved by BNSF, and each portion shall be promptly commenced by the parties hereto obligated to do the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction that affect Railway shall be subject to approval by Railway prior to commencement of such changes or modifications.
2. That such work shall be done in accordance with detailed plans and specifications approved by both parties.
3. Agency and Railway shall to the extent reasonably practicable adhere to the construction schedule for all Project work. The parties agree that Railway's failure to complete Railroad work in accordance with the construction schedule by reason of inclement weather, unforeseen railroad emergencies, or other conditions beyond its reasonable control, will not constitute a breach of this Agreement by Railway nor subject Railway to any liability or responsibility for added expense to the Agency.
4. In the event of an unforeseen railroad emergency and regardless of the requirements of the construction schedule, Railway reserves the right to reallocate all or a portion of its labor forces assigned to perform the Railroad Work when Railway believes such reallocation is necessary to provide for the immediate restoration of railroad operations of Railway or its affiliates or to protect persons or property on or near any Railway owned property or any related railroad. Railway will reassign such labor forces to again perform the Railroad Work when, in its sole but good faith opinion, such emergency condition no longer exists. Railway will not be liable for any additional costs or expenses of the Project resulting from any such reallocation of its labor forces. The parties further agree that such reallocation of labor forces by Railway and any direct or indirect results of such reallocation will not constitute a breach of this Agreement by Railway.
5. That if any Agency Contractor shall prosecute the Project work contrary to the Plans and Specifications or if any Agency Contractor shall prosecute the Project work in a manner Railway deems to be hazardous to its property, facilities or the safe and expeditious movement of its traffic, or the insurance described in "The Right-of-Entry Agreement" hereof shall be canceled during the course of the Project, the Railway shall have the right to stop the work until the acts or omissions of such Agency Contractor have been fully rectified to the satisfaction of Railway's Division Engineer, or additional insurance has been delivered to and accepted by Railway. Such work stoppage shall not give rise to or impose upon Railway any liability to Agency, or to any Agency Contractor. The right of Railway to stop the work is in addition to any other rights Railway may have which include, but are not limited to, actions for damages or lost profits. In the event that Railway shall desire to stop work, Railway agrees to give immediate notice thereof in writing to those individuals set forth in Section 18 of this Article III.
6. The Agency shall supervise and inspect the operations of all Agency contractors to assure compliance with the plans and specifications, the terms of this agreement and all safety requirements of Agency. If at any time during construction Agency determines that proper supervision and inspection is not being performed by Agency personnel, Agency shall have the right to stop construction (within or adjacent to its operating right of way) and to request that the Agency correct the situation before construction is allowed to proceed. If Railway believes the situation is not being corrected in an expeditious manner, Railway shall immediately notify the Agency so that the Agency can take appropriate corrective action.
7. The Project shall not be commenced by Railway until Agency has issued Railway a "Notice to Proceed". Agency's Contractor shall not commence construction of the Project until the Agency shall have given not less than thirty (30) days prior written notice to Agency's Manager of Public Projects which notice shall state the time that Agency's Contractor plans to begin construction of the Project. Each notice shall make reference to Railway's file name Tacoma, WA. - Tacoma Narrows Bridge Construction.
8. The construction of said Project shall be performed and effected in such a manner as not to interfere with the safe and timely operation of locomotives, trains, cars and on track maintenance equipment, over Railway's tracks.
9. After completion of the construction of the Project as hereinabove described:
  - (a) Railway will, at its sole cost and expense, own and maintain its roadbed, tracks, railroad drainage, and all other railroad facilities.
  - (b) Agency will own and, at its sole cost and expense, maintain the Structure, the highway approaches, and

appurtenances thereto, lighting and drainage.

10. Before entering upon Railway's right of way for maintenance purposes, Agency shall notify Railway's Manager Public Projects to obtain prior authorization, and, if work is contracted, Agency will require its contractor(s) to comply with the obligations in favor of Railway, set forth in the "Right-of-Entry Agreement" as may be revised from time to time, and accepts responsibility for compliance by its contractor(s).
11. Agency shall indemnify and save harmless Railway, its agents and employees, against all liability, claims, demands, damages, or costs for (a) death or bodily injury to persons including, without limitation, the employees of the parties hereto, (b) injury to property including, without limitation, the property of the parties hereto, (c) design defects, or (d) any other loss, damage or expense arising under either (a), (b) or (c), and all fines or penalties imposed upon or assessed against Railway, and all expenses of investigating and defending against same, arising in any manner out of (1) activities, use, or presence, or negligence of Agency, or Agency's employees, or Agency's contractors, subcontractors, agents, invitees or any of their employees, in, on, or near Railway's right of way, or, (2) The performance, or failure to perform, by the Agency, its contractors, subcontractors, or agents, its work or any obligation under this agreement..
12. The Railway reserves the right to make modifications or additions to its facilities within the limits of its right of way subject to applicable laws, rules or regulations, provided that the usefulness of the overcrossing for the purpose of separating highway and railroad traffic shall not thereby be impaired and reasonable notice of significant changes affecting the roadway is given to the Agency.
13. The Agency will not do, or permit anything within the easement area which will interfere with or endanger the facilities or operations of the Railway. The Agency further agrees that the minimum vertical clearance from the bottom of the bridge to the top of the rail will not be reduced to less than 23 feet 6 inches. The minimum horizontal and vertical clearances for construction shall be as shown on the approved plans. The Railway shall not intentionally do, nor permit, anything that will interfere with or endanger roadway facilities or vehicular traffic using the overcrossing.
14. If the highway overcrossing shall at any time cease to be used by the public as a highway overpass, or shall by operation of law or otherwise become vacated or abandoned, the rights and benefits to the Agency and to the Owner under this Agreement shall immediately cease and the Agency and/or the Owner shall remove said structure at it's own cost and expense. If at a reasonable time the Agency and/or the Owner has not removed the said structure, the Railway shall remove the said structure at the Agency's expense. The Railway shall be entitled to repossess the land to which it has executed easements to the Owner and to use the land thereafter as if this Agreement had never been executed.
15. This Agreement shall be interpreted in accordance with the laws of the State of Washington.
16. All the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, except that no party may assign any of its rights or obligations hereunder without the prior written consent of the other party.
17. In the event that construction of the Project has not begun for a period of three years from the date of this agreement, this agreement shall become null and void.
18. Any notice provided for or concerning this agreement shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

The Burlington Northern and  
Santa Fe Railway Company:

Railway's Manager of Public Projects

[Redacted Address Block]  
Seattle, WA, 98104-1000  
Telephone: (206) 464-1000  
Teletype: (206) 464-1000

1. Содержание 1  
 2. Введение 2  
 3. Основное содержание 3  
 4. Заключение 4  
 5. Список литературы 5

North Coast of  
California, W.A.  
Mariposa Co. (1913) 2500  
Mariposa Co. (1913) 2500

[REDACTED]

[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] WY 96-100  
[REDACTED] (253) 784-1449  
[REDACTED] (253) 784-1449

b6  
b7C  
b7D

Chyngene, NYA-085044-709  
Tachikawa No. (360) 705-717  
Telarady No. (360) 705-5815

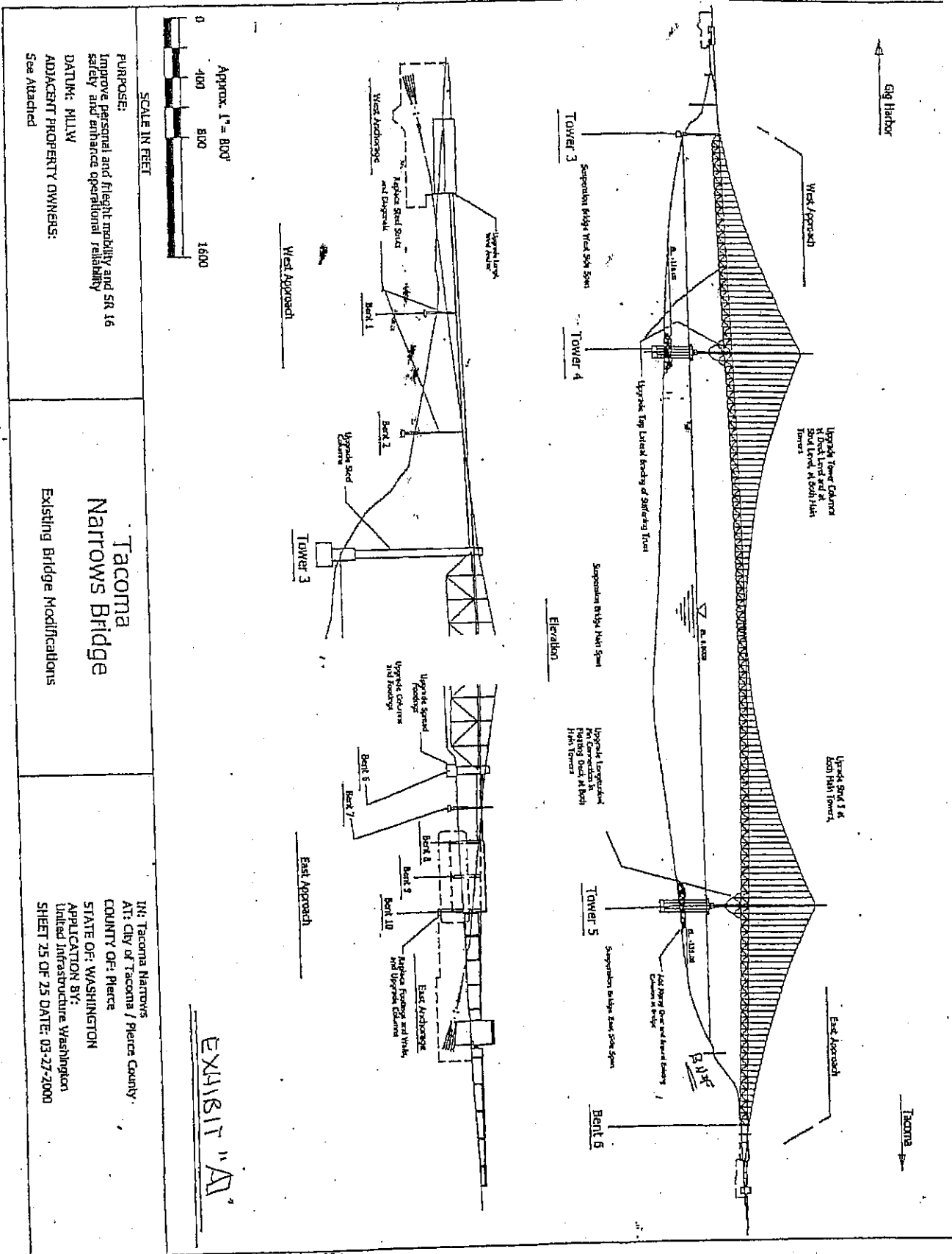
THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

WITNESS:

\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_





**PURPOSE:**  
Improve personal and freight mobility and SR 16 safety and enhance operational reliability

**DATUM:** MLLW

**ADJACENT PROPERTY OWNERS:**  
See Attached

**Tacoma Narrows Bridge**

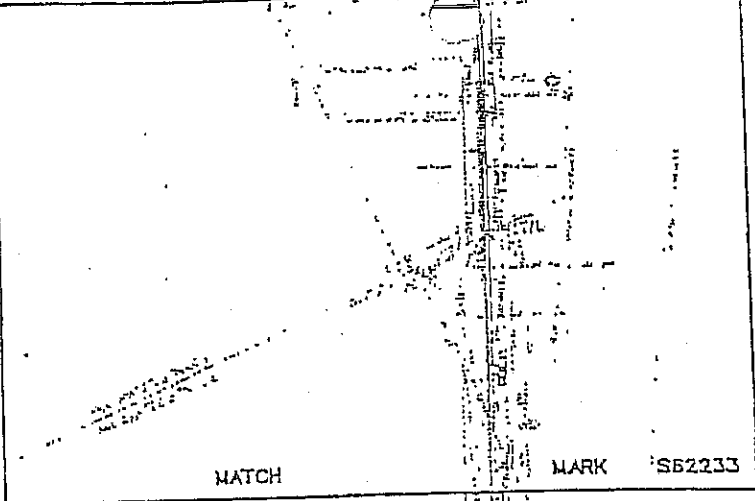
Existing Bridge Modifications

**IN:** Tacoma Narrows  
AT: City of Tacoma / Pierce County  
**COUNTY OF:** Pierce  
**STATE OF:** WASHINGTON  
**APPLICATION BY:**  
United Infrastructure Washington  
**SHEET 25 OF 25 DATE:** 03-27-2000

g:\0821\figures\Fermit\Figures\figure25.dwg

Scale: 1" = 400' +/-

Slouboch File T187.234  
B&W W.O. 12196.003  
MAP REFERENCE:  
Sta. - N / A  
R/W - 152418  
Land - N / A



Legend:  
[Shaded Box] Easement Area

Department of +/- 0.88 Ac.  
Washington State  
Department of Transportation  
Pierce County,  
Washington

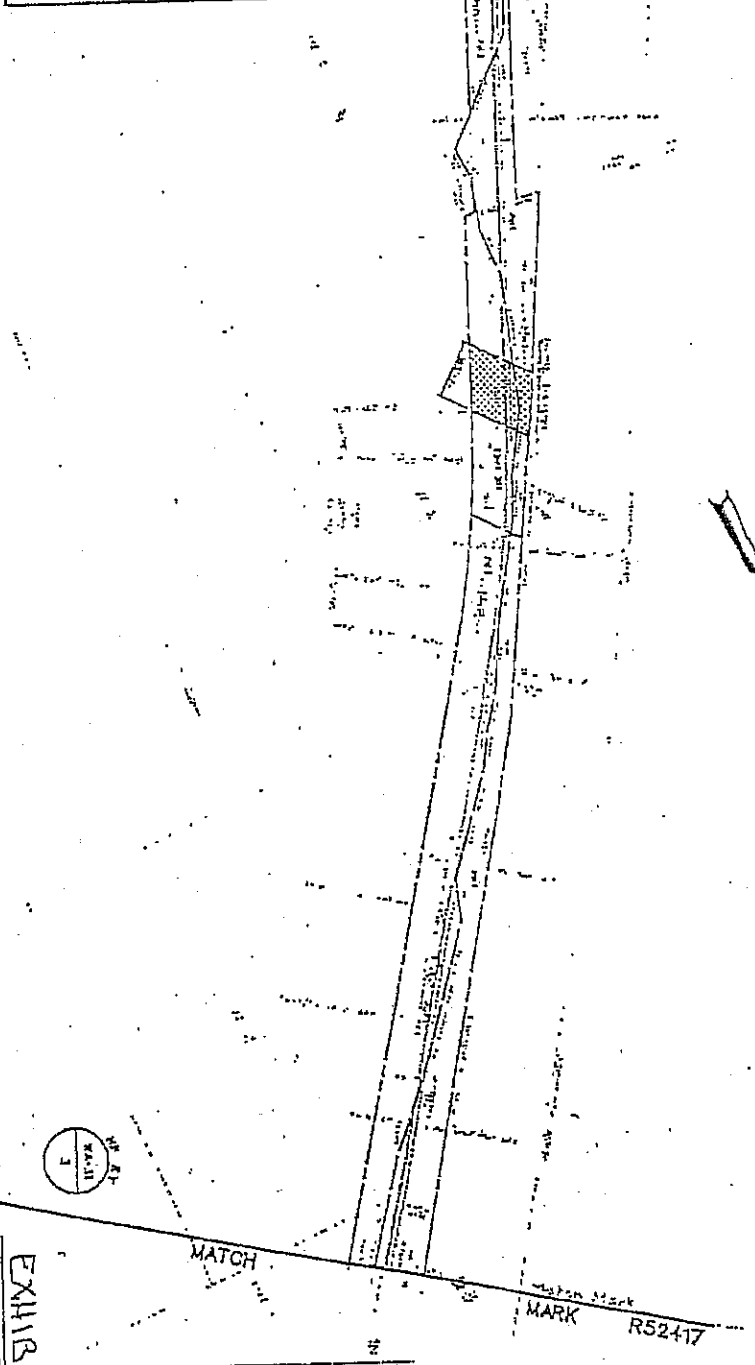


EXHIBIT "A"

To: Seattle

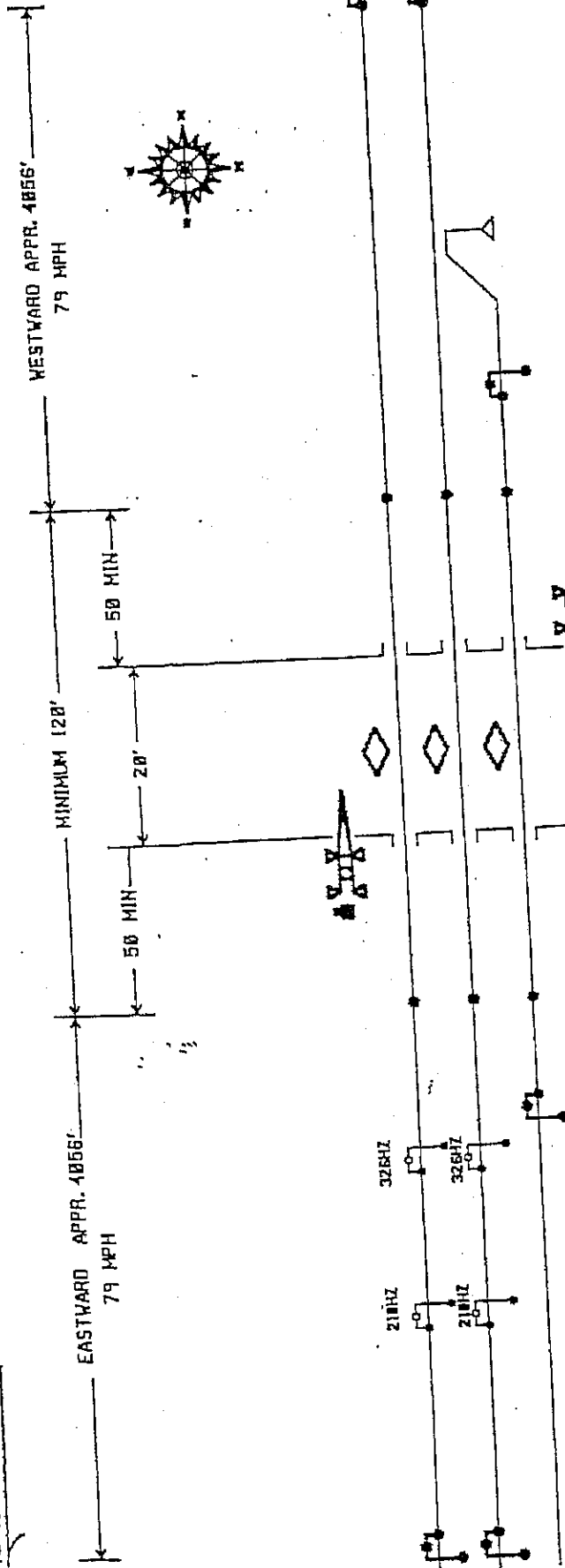
Pacific Division  
Seattle Subdivision - L.S. 0052  
Vol. Sec: NP RY  
WA-31, Map 03  
Sec. 34, T24N, R2E WLLM  
March 14, 2001  
M.P. 8.43 BLM

DRAWING NO. J-24170

TO NELSON BENNETT

# The Burlington Northern & Santa Fe Railway Company

TO TITLOW



INSTALL: GATES & FLS  
CONTROL DEVICES: CONSTANT WARNING

BOLD- IN

~~SLASH~~ OUT

SALVAGE: NONE

INSTRUMENT HOUSE

BELL

METER

CROSSING CONTROL CONNECTIONS

UNIDIRECTIONAL CROSSING CONTROL

BIDIRECTIONAL CROSSING CONTROL

COUPLER OR TERMINATION

GUARD RAIL

EXHIBIT "A"

BNSF RAILWAY CO.

TACOMA, WA

2ND NARROWS BRIDGE

LS 0052 SEATTLE SUBDIVISION

MP. 8.55 PACIFIC DIVISION

DOT# NOT ASSIGNED

KANSAS CITY

NO SCALE DATE: 12/21/88

FILE: 00528-56.DGN TLP/REM

Warning device placement:

Clearance to C.L. of Track = Min. 12', Max. 20'

Edge of Road to C.L. Foundation

Min. 4' with curb, Max. 12'

Min. 8' without curb, Max. 12'

House Clearance: 25' Min. to C.L. of Track

Front Lights: 30' Min. to Edge of Road

Back and Side Lights: 30-15 Degree Lenses

Centilever Jury Mast: 20-32 Degree Lenses

\*\*\*\*\* MAINTAIN PROPRIETARY CONFIDENTIALITY \*\*\*\*\*

THE B. N. S. F. RAILWAY COMPANY  
FHPM ESTIMATE FOR  
STATE OF WASHINGTON

DETAILS OF ESTIMATE

LOCATION - TITLE

PURPOSE, JUSTIFICATION AND DESCRIPTION

BNSF FORCES TO INSTALL TRACK PROTECTION TO STANDARD. MATERIAL WILL BE FURNISHED BY STATE AND WILL BE 100% AT STATE EXPENSE.

ROAD MASTER'S OFFICE TO ORDER THE FLANGER SIGNS TO FIT FIELD REQUIREMENTS.

BNSF FORCES TO PLACE A 24 FT CONCRETE PRIVATE CROSSING SURFACE ON MAIN #1, MAIN #2 AND SIDING. 100% BILLABLE TO THE STATE OF WASHINGTON.

DESCRIPTION	QUANTITY	U/H	COST	TOTAL \$
*****				
LABOR				
*****				
PLACE CROSS TIES	100.28	MH		
PLACE FIELD WELDS	261.60	MH		
PLACE FILTER FABRIC	52.32	MH		
PLACE PRIVATE CROSSING	100.28	MH		
PLACE PVC PIPE	52.32	MH		
PLACE RAIL/OTH	100.28	MH		
REMOVE CROSS TIES	78.48	MH		
REMOVE PRIVATE CROSSING	50.14	MH		
REMOVE RAIL/OTH	78.48	MH		
SURFACE TRACK	78.48	MH		
TRACK PROTECTION	279.04	MH		
UNLOAD BALLAST	13.08	MH		
WORK TRAIN - BALLAST	34.50	MH		
PAYROLL ASSOCIATED COSTS				
EQUIPMENT EXPENSES				
SUPERVISION EXPENSES				
INSURANCE EXPENSES				

TOTAL LABOR COST

\*\*\*\*\* MATERIAL \*\*\*\*\*

BALLAST, FROM DELTA YARD	750.00	NT		
ELBOW, PLASTIC	12.00	EA		
FABRIC, POLYESTER, 186 IN WIDE, 16 O	240.00	LF		
WORK TRAIN FUEL - BALLAST	844.00	GAL		
PIPE, PLASTIC, PERFORATED PVC 6 IN	375.00	FT		
POST, SIGN, 8 FT STEEL POINTED END	2.00	EA		
RAIL, TRANSH, LH, 25 FT 136-1/4 WORN 115	2.00	EA		
RAIL, TRANSH, RH, 25 FT 136-1/4 WORN 115	2.00	EA		
RAIL, TRANSH, BLANK ENDS, 40 FT	8.00	EA X		
RAIL, 136 LB NEW WELDED, PREMIUM :	480.00	LF		
SIGN, PRIVATE CROSSING, NO TRESPASSING	2.00	EA		
SIGN, STOP, PRIVATE CROSSING - 24", RED	2.00	EA		
SPIKE, TIMBER SCREW, 5/8x12 IN, F/ROAD XING	108.00	EA		
TEES, PLASTIC PVC	12.00	EA		
TIE, TRK, 10", PRE-PLATED, PANDROL, 6", ROUND HOLE	150.00	EA		
WELD, KIT, GENERIC FOR ALL RAIL WEIGHTS	30.00	KT		
CONC 136 OB-SEC WITH FILLER FOR WOOD	72.00	TF		
SIGN, FLANGER, NO. 121	6.00	EA		
STORE EXPENSES				
ONLINE TRANSPORTATION				
USE TAX				
OFFLINE TRANSPORTATION				

TOTAL MATERIAL COST

\*\*\*\*\* OTHER \*\*\*\*\*

EXCAVATOR RENTAL	1.00	LS		
FRONT END LOADER RENTAL	1.00	LS		
TIE DISPOSAL COSTS - CONTRACT	150.00	EA		

1

TOTAL OTHER ITEMS COST

PROJECT SUBTOTAL  
CONTINGENCIES  
BILL PREPARATION FEE

GROSS PROJECT COST  
LESS COST PAID BY BNSF

TOTAL BILLABLE COST

EXHIBIT "B"

MAINTAIN PROPRIETARY CONFIDENTIALITY

THE B. N. S. F. RAILWAY COMPANY  
FHPM ESTIMATE FOR  
STATE OF WASHINGTON

LOCATION - TACOMA

DETAILS OF ESTIMATE

PURPOSE, JUSTIFICATION AND DESCRIPTION

INSTALL NEW CROSSING SIGNALS AT NEW 2ND NARROWS BRIDGE RD. CROSSING. WITH CONSTANT WARNING, FLASHERS AND GATES, BATT., CABLE, RTU, BUNGALOW, ENG., SHIPPING AND ETC. LS-0052, MP. 8.56, PACIFIC DIV., SEATTLE SUBDIV.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.

THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.

CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

THIS ESTIMATE GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR MATERIAL, LABOR, AND OVERHEADS.

SIGNAL WORK ONLY

THE STATE OF WASHINGTON IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY

NO DOT # HAS BEEN ASSIGNED TO THIS CROSSING AT THIS TIME.

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$
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LABOR

ELECTRICAL LABOR F/POWER TRANS SYS  
SIGNAL FIELD LABOR  
SIGNAL SHOP LABOR  
PAYROLL ASSOCIATED COSTS  
EQUIPMENT EXPENSES  
SUPERVISION EXPENSES  
INSURANCE EXPENSES

30.00 MH  
544.00 MH  
100.00 MH

TOTAL LABOR COST

MATERIAL

BATTERY  
BONDS  
BUNGALOW 5X6  
CABLE  
FOUNDATIONS  
GATE MECH. MODEL 95 COMPLETE  
HXP3R SYSTEM  
HXP3R2 SYSTEM  
METER MATERIAL  
MISC. BUNGALOW MATERIAL  
MISC. FIELD MATERIAL  
MISC. MATERIAL  
RTU-6, CELLULAR MONITOR  
SHUNTS  
VIGILANT RECORDER  
STORE EXPENSES  
USE TAX  
OFFLINE TRANSPORTATION

1.00 EA N  
60.00 EA N  
1.00 EA N  
1.00 EA N  
2.00 EA N  
2.00 EA N  
1.00 EA N  
1.00 EA N  
1.00 EA  
1.00 LS N  
1.00 LS N  
1.00 EA N  
1.00 EA N  
2.00 EA N  
1.00 EA N

TOTAL MATERIAL COST

OTHER

CONTRACT ENGR.  
DIRECT SHIPPING  
EQUIPMENT RENTAL  
FILL DIRT  
SURFACE ROCK

1.00 EA N  
1.00 LS N  
1.00 LS N  
10.00 CY N  
10.00 CY N

TOTAL OTHER ITEMS COST

PROJECT SUBTOTAL

CONTINGENCIES

BILL PREPARATION FEE

GROSS PROJECT COST

LESS COST PAID BY BNSF

TOTAL BILLABLE COST

EXHIBIT "B"

CONTRACTOR'S  
RIGHT OF ENTRY AGREEMENT  
FOR CONSTRUCTION PROJECTS ON OR ADJACENT TO PROPERTY OF  
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Gentlemen:

The undersigned, hereinafter referred to as Contractor, has entered into a Contract dated \_\_\_\_\_, 2001, with United Infrastructure, Washington ("Agency") for the performance of certain work in connection with the project. The construction of the Tacoma Narrows overhead bridge (MP 8.51) in the performance of which work the Contractor will necessarily be required to conduct operations within THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("Railway"), right of way and property ("Railway Property"). The Contract provides that no work shall be commenced within Railway Property until the Contractor employed in connection with said work for Agency executes and delivers to Railway an Agreement, in the form hereof, and shall have provided insurance of the coverage and limits specified in said Contract and Section 2 of this Agreement. If this Agreement is executed by other than the Owner, General Partner, President or Vice President of Contractor, evidence is furnished to you herewith certifying that the signatory is empowered to execute this Agreement for the Contractor.

Accordingly, as one of the inducements to and as part of the consideration for Railway granting permission to Contractor to enter upon Railway Property, Contractor, effective on the date of said Contract, has agreed and does hereby agree with Railway as follows:

**SECTION 1. RELEASE OF LIABILITY AND INDEMNITY**

Contractor agrees to release Railway from any claims arising from the performance of this Agreement which Contractor or any of its employees, subcontractors, agents or invitees could otherwise assert against Railway, regardless of the negligence of Railway, except to the extent that such claims are proximately caused by the intentional misconduct or gross negligence of Railway.

Contractor shall indemnify and hold harmless Railway for all judgments, awards, claims, demands, and expenses (including attorney's fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or failure to perform any obligation hereunder. **THE LIABILITY ASSUMED BY CONTRACTOR SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

**THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR SHALL INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.**

Nothing in this agreement is intended to be construed as a requirement for the indemnification against the sole negligence of the Railway, its officers, employees or agents for any work relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, performed in the State of Washington. Indemnification against liability for damages arising out of bodily injury to persons or damage to property for any work relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, performed in the State of Washington and caused by or resulting from the concurrent negligence of the Railway and the Agency and its agents or employees will be enforceable only to the extent of the negligence of the Agency and its agents and employees.



The indemnification obligation shall include all claims brought by Contractor's employees against the Railway, its agents, servants, employees or otherwise, and Contractor expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it shall adjust and settle all claims made against Railway, and shall, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway shall give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor shall proceed to adjust and handle to a conclusion such claims, and in the event of a brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, shall defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

## SECTION 2. INSURANCE.

(a). Before commencing any work under this Agreement, Contractor must provide and maintain in effect throughout the term of this Agreement insurance, at Contractor's expense, covering all of the work and services to be performed hereunder by Contractor and each of its subcontractors, as described below:

(1). Workers' Compensation coverage as is required by State law. THE CERTIFICATE MUST CONTAIN A SPECIFIC WAIVER OF THE INSURANCE COMPANY'S SUBROGATION RIGHTS AGAINST THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY.

(2). Commercial General Liability insurance covering liability, including but not limited to Public Liability, Personal Injury, Property Damage and Contractual Liability covering the obligations assumed by Contractor in Section 1, with coverage of at least \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Where explosion, collapse, or underground hazards are involved, the X, C, and U exclusions must be removed from the policy.

(3). Automobile Liability insurance, including bodily injury and property damage, with coverage of at least \$1,000,000 combined single limit or the equivalent covering any and all vehicles owned or hired by the Contractor and used in performing any of the services under this agreement.

(4). Railroad Protective Liability insurance stating The Burlington Northern and Santa Fe Railway Company is the Named Insured covering all of the liability assumed by the Contractor under the provisions of this Agreement with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. Coverage shall be issued on a standard ISO form CG 00 35 01 96 and endorsed to include ISO form CG 28 31 10 93 and the Limited Seepage and Pollution Endorsement (see attached copy).

(b). The average train traffic per 24-hour period on this route is 52 through freight trains at a timetable speed of 50 MPH, 2 Talgo type passenger trains at a timetable speed of 60 MPH, and 6 other passenger trains at a timetable speed of 60 MPH and --- switch engine movements.

(c). All insurance shall be placed with insurance companies licensed to do business in the States in which the work is to be performed, and with a current Best's Insurance Guide Rating of A- and Class VII, or better.

(d). In all cases except Workers' Compensation and Railroad Protective Liability coverage the certificate must specifically state that THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY IS AN ADDITIONAL INSURED.

(e) Any coverage afforded Railway, the Certificate Holder, as an Additional Insured shall apply as primary and not excess to any coverage issued in the name of Railway.

(f). Such insurance shall be approved by the Railway before any work is performed on Railway's Property and shall be carried until all work required to be performed on or adjacent to Railway's Property under the terms of the contract is satisfactorily completed as determined by United Infrastructure Washington, Inc., and thereafter until all tools, equipment and materials not belonging to the Railway, have been removed from Railway's Property and Railway Property is left in a clean and presentable condition. The insurance herein required shall be obtained by the Contractor and Contractor shall furnish Railway with an original certificate of insurance, signed by the insurance company, or its authorized representative, evidencing the issuance of insurance coverage as prescribed in (a) 1, 2 and 3 above, plus the original Railroad Protective Liability insurance policy to:

Attention: Maintenance Field Support  
The Burlington Northern and Santa Fe Railway Company  
Maintenance Field Support  
4501 Kansas Avenue  
Kansas City, Kansas 66106

(g). The certificate of insurance shall guarantee that the policies will not be amended, altered, modified or canceled insofar as the coverage contemplated hereunder is concerned, without at least thirty (30) days notice mailed by registered mail to Railway.

(h). Full compensation for all premiums which the Contractor is required to pay on all the insurance described hereinafter shall be considered as included in the prices paid for the various items of work to be performed under the Contract, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.

It is further distinctly understood and agreed by the Contractor that its liability to the Railway herein under SECTION 1 will not in any way be limited to or affected by the amount of insurance obtained and carried by the Contractor in connection with said Contract.

### SECTION 3. CONTRACTOR REQUIREMENTS

(a). While on or about Railway Property, Contractor shall fully comply with Railway's "Contractor Requirements", including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor shall be responsible for fully informing itself as to Railway "Contractor Requirements".

(b). Prior to entering Railway Property, each person providing labor, material, supervision, or services connected with the work to be performed on or about Railway Property shall attend a Safety Orientation session conducted or approved by Railway. Contractor shall contact Manger Public Projects, I. M. (Mike) Cowles, telephone (206) 625-6146 fax (206) 625-6115, at least thirty (30) calendar days in advance to arrange the necessary safety orientation session(s).

(c). Prior to entering Railway property, the Contractor shall prepare and implement a safety action plan acceptable to Railway. Contractor shall audit it's compliance with that plan during the course of it's work. A copy of said plan and audit results shall be kept at the work site and shall be available for inspection by Railway at all reasonable times

### SECTION 4. PROTECTION OF RAILWAY FACILITIES AND RAILWAY FLAGGER SERVICES

(a). The Contractor shall give a minimum of at least thirty (30) working days notice to Wayne Longren the Railways Roadmaster at telephone (253) 591-2563, in advance of when flagging services will be required to bulletin the flaggers position and shall provide five (5) working days notice to the Roadmaster to abolish the position per union requirements.

(b). Railway flagger and protective services and devices will be required and furnished when Contractor's work activities are located over or under of and within twenty-five (25) feet measured horizontally from center line of the nearest track and when cranes or similar equipment positioned outside of 25-foot horizontally from track center line that could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

(1). When in the opinion of the Railway's representative, it is necessary to safeguard Railway's Property, employees, trains, engines and facilities.

(2). When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

(3). When work in any way interferes with the safe operation of trains at timetable speeds.

(4). When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

(5). Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

(c). Flagging services will be performed by qualified Railway flaggers. The base cost per hour for (1) flagger is \$50.00 which includes vacation allowance, paid holidays, Railway and Unemployment Insurance, Public Liability and Property Damage Insurance, health and welfare benefits, transportation, meals, lodging and supervision, for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. These rates are subject to any increases which may result from Railway Employees-Railway Management negotiations or which may be authorized by Federal authorities. State/Contractor will be billed on actual costs in effect at time work is performed.

(1). A flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railway's representative.

(2). Each time a flagger is called, the minimum period for billing shall be the eight (8) hour basic day.

(3). The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the State/Contractor.

(4). The average train traffic per 24-hour period on this route is 26 freight trains at a timetable speed of 50 MPH, 2 Talgo passenger trains at a timetable speed of 60 MPH, and 6 passenger trains at a timetable speed of 60 MPH and --- switch engine movements.

## SECTION 5. TRAIN DELAYS

No work performed by Contractor shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railway, its lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the Railway Representative. Nothing shall be done or suffered to be done by the Contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept at least 50 feet from the centerline of Railway's nearest track or except when located within a fenced area or approved by Railway, and there shall be no vehicular crossings of Railway's track except at existing open public crossings, or via the temporary construction crossing.

Contractor shall be responsible to Railway, including its affiliated railway companies, and its tenants for damages for any unscheduled delay to freight or passenger trains that are caused by the Contractor as follows:

### (a). Train Delay Damages, Passenger Trains

(1). Contractor will be billed and Contractor shall pay Railway within 30 days, as provided below, for the actual economic losses arising from loss of contractual incentive pay and bonuses, and contractual penalties resulting from passenger train delays, whether caused by Contractor, or subcontractors, or by the Railway performing Railway Work associated with this project. Railway agrees that it will not perform any act to unnecessarily cause passenger train delay.

(2). Passenger trains operate under incentive/penalty contract with the Railway. Under these arrangements, if Railway does not meet its contract service commitment, Railway may suffer loss of performance or incentive pay or be subject to a penalty payment. Contractor shall be responsible for any passenger train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a passenger train delay caused by Contractor, or subcontractors.

(3). As example, a passenger train arrives 30 minutes after its contract service commitments with the Railway and Railway is assessed damages per terms of the contract. Contractor, and/or it's subcontractors, caused a 29 minute delay to the passenger train and therefore the Contractor is not responsible for passenger train performance incentives, penalties or other contractual economic losses actually incurred by Railway.

(4). As example, a passenger train arrives 30 minutes after its contract service commitment and Railway is assessed damages per terms of the contract. Contractor, and/or it's subcontractors, caused a 31 minute delay to the passenger train and therefore the Contractor is 100% responsible for any passenger train performance incentive, penalties or other contractual economic losses actually incurred by Railway.

(5). The contractual relationship between Railway and its passenger customers is proprietary and confidential. In the event of a passenger train delay covered by this Agreement, Railway will share information relevant to any passenger train delay to the maximum extent consistent with Railway confidentiality obligations. Damage for passenger train delays for certain passenger trains could be as high as \$50,000.00 per passenger train.

(b). Train Delays Damages, Freight Trains

(1). Contractor will be billed and Contractor shall pay Railway within 30 days, as provided herein, for the damages for freight train delays, whether caused by the Agency, its contractors or subcontractors, or by the Railway working for the Agency. The Contractor will be billed at a rate of \$304.28 (for 1998) per freight train hour for each freight train delayed as determined from Railway's records. Each delay may cause delays to more than one freight train at the same time. These rates will be updated annually and Contractor will be billed at rate per hour in effect at the time the delay occurred.

Kindly acknowledge receipt of this letter by signing and returning to the undersigned two original copies of this letter, which, upon execution by Railway, shall constitute an Agreement between us.

Yours truly,

(Contractor)

By \_\_\_\_\_

(Title)

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

The Burlington Northern and Santa Fe  
Railway Company

By \_\_\_\_\_  
Manager Public Projects

Accepted this \_\_\_\_\_ day of \_\_\_\_\_  
2001

LIMITED SEEPAGE, POLLUTION AND CONTAMINATION COVERAGE  
ENDORSEMENT WORDING

In consideration of the premium charged it is understood and agreed that Exclusion f. of Coverage A. of this Policy shall not apply to the liability of the Insured resulting from seepage and/or pollution and/or contamination caused solely by:

- a) unintended fire, lightning or explosion: or
- b) a collision or overturning of a road vehicle: or
- c) a collision or overturning or derailment of a train.

Notwithstanding the foregoing it is agreed that the coverage provided by this Endorsement shall not apply to:

- 1. loss of, damage to or loss of use of property directly or indirectly resulting from sub-surface operations of the Insured, and/or removal of, loss of or damage to sub-surface oil, gas or any other substance;
- 2. any site or location used in whole or in part for the handling, processing, treatment, storage, disposal or dumping of any waste materials or substances;
- 3. the cost of evaluating and/or monitoring and/or controlling seeping and/or polluting and/or contaminating substances;
- 4. the cost of removing and/or nullifying and/or cleaning up seeping and/or polluting and /or contaminating substances on property at any time owned and/or leased and/or rented by the insured and/or under the control of the Insured.

Notwithstanding the foregoing, Item 1 does not apply to tunnels.